

IN THE COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Common Law and Equity Division
2021/CLE/gen/1050

B E T W E E N

FITZROY EDWARDS

Claimant

AND

THE HON. RYAN PINDER
(in his capacity as Attorney General of The Bahamas)

THE HON. KEITH BELL
(in his capacity as Minister of Immigration)

CLARENCE A RUSSELL
(in his capacity as Director of Immigration)

FAUSTEEN MAJOR SMITH
(in her capacity as Officer in Charge of the Carmichael Detention Center)

COMMODORE DR. RAYMOND KING
(in his capacity as Commander of the Royal Bahamas Defence Force)

Defendants

Before: Assistant Registrar Jonathan Deal

Appearances: Doneth Cartwright with Lavar Ferguson for the Claimant
Keith Cargill for the Defendants

Judgment date: 30 October 2025

JUDGMENT ON ASSESSMENT OF DAMAGES

[Amended paragraph [18] pursuant to Part 42.10 of the Supreme Court Civil Procedure Rules, 2022]

ASSISTANT REGISTRAR DEAL

[1.] This is the assessment of damages against the Defendants arising out of the Claimant's unlawful arrest and detention in the Carmichael Road Detention Center for several months in 2021, undertaken pursuant to a Judgment on Liability filed on 25 August 2025.

Background

[2.] The Claimant is a 50 year old mechanic and a Jamaican citizen who has resided in The Bahamas since 2010. In April 2011, the Claimant was issued a resident spouse permit with an expiration date in October 2015 as the spouse of a Bahamian citizen (having married her on 6 October 2010). According to the Claimant, he lost several documents, including his Jamaican passport and his resident spouse permit, and was not able to renew his spouse permit "on time" because he was not able to replace his passport.

[3.] The Claimant was convicted in a Magistrate's Court of theft and property damage and sentenced to a term of imprisonment to be served at the Bahamas Department of Correctional Services for those offences. After serving his sentence, he was transferred from the Bahamas Department of Correctional Services into the custody of the Department of Immigration instead of being released. The Department of Immigration transported him to the Carmichael Road Detention Center in handcuffs and detained him there without charge until his release on 1 October 2021 following a habeas corpus application.

[4.] In his Amended Statement of Claim filed on 13 December 2023, the Claimant claimed damages for unlawful arrest, false imprisonment for 230 days, assaults and batteries, damages for breaches of his fundamental constitutional rights under **Articles 17, 19(2), 19(3) and 25 of the Constitution**, general damages, aggravated damages, exemplary/punitive damages, special damages comprising \$62,735 in legal fees incurred by him in retaining Callenders & Co to conduct the habeas corpus proceedings to secure his release, compensation under **Article 19(4) of the Constitution**, and compensatory and vindictory damages under the **Constitution**.

[5.] The prayer in the Claimant's Amended Statement of Claim claimed:

- "1. Damages for unlawful arrest;
2. Damages for false imprisonment;
3. Damages for assaults and batteries;
4. Damages for breach of his fundamental constitutional rights under, *inter alia*, Articles 17, 19(1), 19(3) and 25 of the Constitution;
5. General damages;
6. Aggravated damages;
- 7 Exemplary/punitive damages;
8. Special damages;
9. Compensation under Article 19(4) of the Constitution;
10. Compensatory and vindictory damages under the Constitution by action under the inherent jurisdiction of the Court, by virtue of Article 15 and Article 28 of the Constitution;
11. Interest;
12. Costs; ..."

[6.] The Claimant's generally endorsed Writ of Summons was served on the Defendants on 29 September 2021. An appearance was entered on 4 October 2021. A Statement of Claim was filed on 22 June 2022 and served on the Defendants on 23 June 2022. The Amended Statement of Claim was served later on 14 December 2023. No defence followed. As a result, the Claimant applied for leave to enter judgment in default of defence on 24 January 2024. Leave was granted on 14 November 2024. Judgment was formally entered on 25 August 2025 in the terms of the relief sought in the Amended Statement of Claim with damages and interest to be assessed.

Evidence

[7.] The only evidence in the assessment came from the Claimant, who filed a witness statement on 21 February 2025, filed a bundle of documents on 10 March 2025 and gave sworn testimony on 25 March 2025. That is so notwithstanding that, in the course of the matter, directions were given without objection permitting both parties to file witness statements and separate bundles of documents.

[8.] Evidence for the assessment was filed and taken in this matter prior to the Judgment on Liability being filed due to an oversight on the part of Counsel and the Court. At a hearing on 23 September 2025, the Court ordered that the steps taken up to the date of the hearing in pursuance of the assessment of damages stand as valid and effective and that the Court would complete the assessment of the damages under the Judgment on Liability on the basis *inter alia* of the documents already filed in the matter and the evidence already taken.

[9.] The Claimant gave the following material evidence in his witness statement:

- (1.) he is a citizen of Jamaica born on 15 October 1974 who has resided in The Bahamas since on or about 2010 as the spouse of a Bahamian citizen having been married on or about 6 October 2010. In April 2011, he was issued a resident spouse permit with an expiration date in October 2015. He is illiterate.
- (2.) he is a trained mechanic skilled in repairing motor vehicles, cranes, refrigerators and heavy-duty equipment. He once worked with Nassau Dairy but he lost his job after he lost his passport and resident spouse permit. After that, he was unable to work and relied on remittances from his mother and sister in New York.
- (3.) on or about 14 February 2021, he was released from "Fox Hill Prison" after serving a three month sentence for theft and property damage. Immediately upon his release, he was kept in a holding area for five hours and then an "immigration bus" arrived to pick him up. He was taken into custody by immigration officials without explanation and transported to and held at the Carmichael Road Detention Center without his consent.
- (4.) on the morning of his arrest, he was handcuffed with his hands behind him, and forced into a "big school bus", driven around for about an hour, and then taken to Magistrate's Court and later taken to the Carmichael Road Detention Center. The handcuffs were so tight that he had a bruise around his wrist, but that bruise healed after a few days.

- (5.) he was not informed of the reason for his detention nor was he charged with any immigration offence. He understood that his "work permit" was lost but expected that the Department of Immigration would have been lenient. He was not allowed to make any phone calls to his wife or family members. He felt alone and depressed because his wife worked in Eleuthera at the time and his family lived in New York and could not travel.
- (6.) upon his arrival at the Carmichael Road Detention Center, he was ordered to strip naked and squat over a mirror, which he felt was humiliating and degrading and "puzzling" because he had come from the Bahamas Department of Correctional Services. The initial treatment by officers was harsh but gradually improved over time.
- (7.) he was placed in a dorm with over 40 other detainees. During his detention, he was subjected to "inhumane and degrading treatment". Some detainees were infected with the COVID-19 virus but there was no access to masks, which severely stressed him out, though he himself did not contract the COVID-19 virus.
- (8.) the conditions at the Carmichael Detention Center were "unbearable" and detainees were treated "like dogs". The food made him sick, as it was cold and unappetizing, and he was not provided hot tea, which caused him stomach pains. After some time, his sister was able to send money from New York and he was "assisted with food from outside". The officers treated him better when they realized he had strong family support in the United States of America.
- (9.) the bathrooms were filthy, and there were no cleaning products (bleach, soap) to clean. There was a severe shortage of toilet paper which led to unbearable odors throughout the dorm. He was unable to brush his teeth for days and had no change of clothes and received no sheets or blankets. His treatment eventually improved after he was able to direct officers to "where money could be collected".
- (10.) he was not physically assaulted by officers but witnessed other detainees being beaten or slapped by "Immigration and/or Defence Force Officers", leaving him in "constant fear" for his safety. When he asked an immigration officer why he was in custody, he was told that "all you stupid ass Jamaicans need to go back home".
- (11.) he was not allowed to speak with his wife and child or his lawyers. Eventually a friend hired Keod Smith as his lawyer, who he paid \$500, who visited him and asked him a few questions but never returned.
- (12.) his wife came to Nassau and made numerous efforts to contact the Department of Immigration to secure his release but was turned away. Friends of his also tried on his behalf without success. On 31 May 2021, after multiple failed attempts to obtain information, his wife wrote a letter to the Department of Immigration seeking his release and to "progress" the renewal of his spousal permit, but no response was received.

- (13.) he remained unlawfully imprisoned at the Detention Center from 22 April 2021 to 1 October 2021. He was not taken before any court, and he was not allowed to speak with a lawyer to explain the reason for his arrest and how he could be released.
- (14.) he was advised by his attorneys that the actions of the Defendants constituted unlawful arrest, false imprisonment, assault and battery, and breaches of his fundamental constitutional rights under the Constitution of The Bahamas.
- (15.) as a direct result of his unlawful detention, he suffered emotional distress, financial losses, and incurred significant legal expenses in pursuing redress:
 - (a) after serving 8 months in the Detention Center, all his clothing and personal belongings were discarded by his landlord. In addition, his motor vehicle, a 2007 Honda Fit valued at \$3,500, was stolen from his residence along with all of his tools of trade, amounting to over \$3,000, and a diagnostic computer valued at \$700. His wife could not secure his belongings because she was working on another island and was not home to secure any of his belongings.
 - (b) he now owes legal fees totaling \$62,735.00 to Callenders & Co for representation and legal proceedings relating to his unlawful detention.

[10.] In cross examination, Counsel for the Defendants challenged the Claimant on his assertion that the Detention Center was “filthy” and that inadequate provision had been made for detainees. Specifically:

- (1.) Counsel for the Defendants put to the Claimant that, upon arrival at the Detention Center, he received a care package that would have included toothpaste, a toothbrush and a number of items that are issued to detainees. The Claimant denied that assertion. He acknowledged receiving a roll of toilet paper.
- (2.) Counsel for the Defendants put to the Claimant that he received bleach, Pinesol and garbage bags daily while at the Detention Center. The Claimant denied that, indicating that the detainees received one jug of bleach to be shared among 40-odd detainees for two weeks.
- (3.) Counsel for the Defendants put to the Claimant that Tuesday and Thursday were “issuance days”, where detainees were issued certain items such as clothing, white undershirts, boxers, soap and tissue, and that the Claimant would have received flip flops whenever requested. The Claimant denied those assertions.
- (4.) Counsel for the Defendants put to the Claimant that he received three meals a day. The Claimant accepted that. However, he denied Counsel for the Defendants’ suggestions that he received six bottles of water a day – he acknowledged receiving one at each meal time – and stated that he got chicken when he was asked if he got fruits, oatmeal and porkchops for meals.

[11.] Counsel for the Defendants put to the Claimant that, while he spoke of there being 40 other detainees in the dormitory, the capacity of the dorms is anywhere up to a maximum of 50 detainees. The Claimant did not dispute that.

[12.] Counsel for the Defendants verified with the Claimant that his evidence was that he was unlawfully detained from 22 April 2021 to 1 October 2021. The transcript records (at page 15, lines 25 to 28):

“Q. You say in your paragraph 21 you indicate you were unlawfully detained from 22nd April to 1st October; is that correct?

A. Yes, sir.”

[13.] Counsel for the Defendants questioned the Claimant about why his wife had not testified in this matter on his behalf, and about his current immigration status, and he suggested to the Claimant that his marriage was a marriage of convenience. The Claimant’s answers to those questions, and the questions asked by his counsel in re-examination, do not need to be set out as the Defendants have not sought to justify the Claimant’s detention or to seek nominal damages in this assessment.

Preliminary

[14.] The Claimant asserted that, in the absence of a defence, the Claimant’s evidence must be accepted in its entirety. The Claimant was cross-examined. The Claimant’s evidence about the matters about which he was challenged may be accepted or rejected to the extent those matters are relevant to quantum.

[15.] In reviewing the Amended Statement of Claim and the evidence in this matter, a number of ambiguities and inconsistencies did not avoid notice. In particular:

- (1.) In his Amended Statement of Claim (at paras [20], [21.2],[27], [29]) and at one point in his witness statement (para [8]), the Claimant claimed that he was detained at the Carmichael Road Detention Center from 14 February 2021. However, elsewhere in his witness statement, he claimed that he was falsely imprisoned from 22 April 2021 (at para [21]) and he confirmed that in cross-examination (see para [12] above).
- (2.) In his Amended Statement of Claim (at para [10]), the Claimant claimed that he was released into the custody of immigration officials after serving a one-month sentence of imprisonment for a “minor offence”. However, in his witness statement (at para [8]), the Claimant stated that he was released into the custody of immigration officials after serving a three-month sentence of imprisonment for theft and property damage (at para [7]).
- (3.) In his Amended Statement of Claim (at para [9]), the Claimant claimed that he lost his passport and resident and spouse permit in 2013. That finds support in a purported letter in the Claimant’s bundle of documents recording that he reported the loss in December 2013 (page 12 of 18). However, in his witness statement, the

Claimant claimed that he lost the documents in 2016 (at para [4]) and that he was prevented from applying to renew his spousal permit “on time” because he was unable to replace the passport without a police report (paras [4] and [5]).

- (4.) In his Amended Statement of Claim (at para [23]), the Claimant claimed that he was locked in an “overcrowded cell” with approximately 100 other detainees. However, in his witness statement (at para [14]), he stated that he was detained in a “dorm” with “over 40” other detainees, without any suggestion that it was overcrowded. In his witness statement (at para [15]), the Claimant referred to there being “no bleach”. However, in cross-examination (lines 8 to 11, page 15 of the transcript), he admitted detainees were given a jug of bleach (albeit the amount provided was not adequate). In his Amended Statement of Claim (at [21]), the Claimant claimed that he was served food “infrequently”. However, in cross-examination, he acknowledged receiving three meals a day.
- (5.) The Claimant referenced being verbally threatened, intimidated and “physically touched” by immigration and/or other officers, being treated in a harsh manner by officers initially, and to being subjected to inhumane and degrading treatment. However, the Claimant’s evidence lacked particularity; for example, the Claimant gave minimal examples of any force causing injury, verbal threats or intimidating conduct save for paragraphs [12] and [20] of his witness statement. In addition, the Claimant vaguely acknowledged that his conditions/treatment improved without indicating when (paras [13], [15] and [17]).

[16.] The assessment of damages is not the forum for issues which would be inconsistent with the liability alleged in the statement of claim to be ventilated, as liability has already been resolved by the default judgment. However, both the number of days that the Claimant was detained and the conditions of his detention are relevant to the amount of the damages that he should be awarded and were the subject of questioning by the Defendants.

[17.] It appears from **Fitzroy Edwards v Vonette Flowers** [2022] 2 BHS J. No. 238 that in **Fitzroy Edwards v Vonette Flowers** 2021/CRI/CON/007 a return was made certifying that the Claimant was admitted to the Bahamas Department of Correctional Services on 22 February 2021, was released into the custody of the Department of Immigration on 22 April 2021 after completing his sentence, and was detained until he was released on 1 October 2021. The Claimant’s otherwise random statement in his witness statement (confirmed in cross examination) that he was unlawfully detained from 22 April 2021 to 1 October 2021 is thus corroborated. In view of this, I take the period of the Claimant’s unlawful detention to be from 22 April 2021 to October 2021.

[18.] Considering the matters mentioned at paragraph ~~[13]~~[15] above, I viewed with some reservation the Claimant’s evidence of his treatment and conditions during his detention. However, the Defendants did not vigorously test the Claimant’s evidence nor did they provide a scintilla of evidence to substantiate the theory advanced in cross examination that the Claimant was treated fairly and kept in fair conditions while at the Detention Center. I therefore accept that the Claimant was treated harshly and kept in hard conditions until they improved after he was able to have money sent to him by family members at some point during his detention. However, I do not

believe that the Claimant's case was wholly free from hyperbole. Liability having been decided by the default judgment, I evaluated the breach of **Article 17** of the **Constitution** in this case to be one towards the lower end of the scale.

Issue

[19.] The Court must determine the quantum of damages to be awarded to the Claimant pursuant to the Judgment on Liability filed on 25 August 2025.

Submissions

[20.] Both the Claimant and the Defendants were given an opportunity to file written submissions. Only the Claimant availed themselves of that opportunity, lodging opening skeleton submissions dated 17 March 2025 and closing submissions dated 5 August 2025. The Defendants made no submissions on the quantum of damages that should be awarded to the Claimant.

[21.] In his closing submissions, the Claimant sought an overall award of damages in the amount of \$398,935, made up the following specific awards:

- General damages for false imprisonment: \$229,000
- Damages for assault and battery: \$30,000
- Aggravated Damages: \$50,000
- Exemplary Damages: \$20,000
- Constitutional Damages: \$50,000
- Special damages: \$69,935

[22.] In supporting the overall award sought in his closing submissions, the Claimant relied on **Tynes v Barr** (1994) 45 WIR 7, **Merson v Cartwright** [1994] BHS J. No. 54, **Jamal Cleare v Attorney General** [2013] 1 BHS J No 64, **Delano Kelton Smith v Commissioner of Police** 2021/PUB/CON/0021, **Farquharson v The Attorney-General** [2015] 1 BHS J. No. 84, **Lockwood v Department of Immigration** [2017] 2 BHS J. No. 120, **Gilford Lloyd v Chief Superintendent Cunningham** [2017] 2 BHS J. No 76, **Antoine Russell v Attorney General** SCCivApp No. 186 of 2017, **Robert Kane v Attorney General** 2011/CLE/gen/170, **Kevin Ronaldo Collie v The Attorney General** 2017/CLE/ GEN/00916, **Anthony Dames v The Attorney General** 2019/CLE/gen/FP/001111, **Daleon Brown v Commissioner of Police** 2019/CLE/gen/FP/00110 and **Rod Bethel v Commissioner of Police** 2017/CLE/gen/00825 as "precedent cases for consideration".

[23.] The Claimant sought pre-judgment interest on the overall award of damages at the rate of 5% per annum from 14 February 2021 to judgment and post-judgment interest at the statutory rate of 6.25% per annum.

Discussion and analysis

[24.] The Claimant is to be compensated for being unlawfully arrested and detained from 22 April 2021 to 1 October 2021 at the Carmichael Road Detention Center, a period of 162 days or 5 months and 9 days, in breach of his rights under the common law and the **Constitution**, and for

the accompanying assaults and batteries that occurred. In assessing the proper compensation due to the Claimant, the Court must award the Claimant fair compensation in recognition of the violation of his rights. However, the Court must also be cognizant that there are parallel claims being advanced and must avoid allowing impermissible double recovery.

Compensatory damages for false imprisonment

[25.] Counsel for the Claimant submitted that local precedent, including **Tynes v Barr** (1994) 45 WIR 7, **Lockwood** [2017] 2 BHS J. No. 120 and **Ngumi**, support awards ranging from \$1,000 to \$5,000 per day of deprivation of liberty. Counsel submitted that, given the extended detention and the inhumane conditions that the Claimant endured, a daily rate of \$1,000 would be “conservative” and general damages for false imprisonment should be \$229,000, that being 229 days x \$1,000 per day.

[26.] I reject the submission that a daily rate of \$1,000 per day of deprivation of liberty is “conservative” or appropriate to the facts of this case. The proposed daily rate is excessive. A daily rate of \$250 was adopted in **Takitota v The Attorney General** [2009] 4 LRC 807, **Ngumi v The Attorney General of The Bahamas** [2023] UKPC 12 and **Amihere v Attorney-General of The Bahamas** [2023] 1 BHS J. No. 90; a daily rate of \$300 was adopted in **Ousman Bojang v The Hon. Carl Bethel** [2022] 1 BHS J No. 46 and **Ramon Lop v Attorney General of The Bahamas** [2022] 1 BHS J. No. 44; and a daily rate of \$500 was adopted in **Dexter Davis v The Queen** 2015/CRI/VBI/23/1 (5 February 2021).

[27.] Useful guidance as to how compensatory damages should be assessed for long periods of unlawful detention was provided by the Judicial Committee of the Privy Council in **Ngumi v The Attorney General of The Bahamas** [2023] UKPC 12. There, Dame Ingrid Simler stated at paragraphs [72] to [74]:

“72. The evaluative exercise called for in assessing the physical and mental deprivation caused by false imprisonment is no less difficult [than the evaluative exercising called for in assessing general damages for personal injuries], and is even less precise. There are no guidelines and no mathematical formula is available to be relied on in every case. Rather, the assessment must be sensitive to the unique facts of the particular case and the degree of harm suffered by the individual concerned, while at the same time reflecting a reasonable degree of proportionality to assessments made in similar cases and to awards for personal injury given the parallels between these two types of award. It is now well-established that the initial shock of unlawful arrest and imprisonment may attract a higher notional element than a later period of detention because people do tend to adjust to their changed circumstances, and the initial shock generally gives way to adaptation and resignation, though this may not always be the case. The way in which the arrest was effected and any attendant publicity may be relevant factors in the assessment. Likewise, in assessing compensation for any later period of unlawful detention that follows, any loss of reputation, loss of enjoyment of life or normal experiences foregone, are likely to require consideration alongside the obvious factors of the length of and conditions and treatment in detention.

73. But damages in these cases should not ordinarily be assessed by dividing the award into separate periods or by fixing a rigid daily rate to be awarded for each day of incarceration and multiplying it by the number of days spent in unlawful detention. Rather, as the Board held in **Takitota** at paragraph 17, compensatory damages should be assessed in the round. The appropriate figure

should 'reflect compensation for the long period of wrongful detention ... any element of aggravation ... the conditions of his detention and ... the misery which he endured' and accordingly, the 'final figure for compensatory damages should therefore amount to an overall sum representing appropriate compensation for the period of [lengthy] detention, taking account of the inhumane conditions and the misery and distress suffered'. That is the correct approach.

74. There may be cases where a notionally separate sum is regarded as appropriate to compensate for the initial shock of unlawful detention, but it is not necessary to distinguish between the initial and later periods of detention in every case. Nor is this necessarily the most principled way of making the assessment. What the Privy Council made clear in *Takitota* however, is that if an initial or daily rate figure is taken and simply extrapolated (by multiplying the daily rate by the number of days) to compensate for a longer unlawful detention period, then it should ordinarily be tapered for the reasons given above."

[28.] The Court of Appeal has also given helpful guidance in **Ramon Lop v Attorney General of the Commonwealth of The Bahamas** SCCiv App No. 118 of 2022 (13 March 2024) to which reference is made.

[29.] As I understand it, the compensatory damages to be awarded to the Claimant for false imprisonment should be a sum assessed in the round as compensation to the Claimant for his deprivation of liberty and injury to feelings. There is no precise measure. The period of wrongful detention, the conditions and treatment in detention, any distress, misery, humiliation, anger or indignation endured by the Claimant, any loss of reputation, loss of enjoyment of life and the normal experiences of life foregone, and any aggravating factors, are to be taken into account in arriving at an appropriate figure. A "reasonable degree of proportionality" must be maintained with similar cases.

[30.] The period of wrongful detention in this case was 162 days or 5 months and 9 days. The Claimant was not arrested "off the street" but was transferred from the custody of the Bahamas Department of Correctional Services after serving a three-month sentence of imprisonment instead of being released into society. This is therefore not an "initial shock case". The Claimant was not informed of the reason for his transfer (in handcuffs) to the Detention Center and his continued detention, nor was he charged with any immigration offence, taken before a court or made the subject of a deportation order. The Claimant was required to undergo a strip search or a visual cavity search. A married man and a father, the Claimant was kept in a dorm room with over 40 other detainees away from his family, though I do not accept the dorm was overcrowded. He was not permitted to contact his wife and child or family members, who were not in Nassau at the time of his transfer, or a lawyer. He felt alone and depressed. Some detainees were infected with the COVID-19 virus but there was no access to masks, which scared him, though he did not himself catch the virus. He was highly frightened by the fact that detainees were sometimes beaten by officers. He was treated harshly by officers for a period. An officer told him "*all you stupid ass Jamaicans need to go back home*" when he asked why he was in custody. The Claimant was kept in harsh inhumane and degrading conditions. The bathrooms were filthy, and there were inadequate cleaning products. There was a severe shortage of toilet paper which led to very strong odors in the dorm. The provided food was of poor quality. It was cold and unappetizing. It made the Claimant sick. The Claimant was unable to brush his teeth for days, had no change of clothes, and received no sheets or blankets. His treatment eventually improved, but only when family members sent money. He suffered emotional distress as a result of the ordeal.

[31.] Counsel for the Claimant submitted that damages should be assessed by reference to local conditions. I have carefully considered the local authorities provided by the Claimant. However, I have not found the “precedent cases” provided to be of much guidance in this case on the issue of compensatory damages for false imprisonment because those cases concerned shorter periods of detention and distinguishable facts.

[32.] Better assistance can, in my view, be obtained from: **Dexter Davis v The Queen** 2015/CRI/VBI/23/1, a case referred to by the Claimant in his opening skeleton submissions, **Martin Orr v The Attorney General of the Commonwealth of The Bahamas** 2017/CLE/gen/00983 (11 February 2021), **Ousman Bojang v The Hon. Carl Bethel** [2022] 1 BHS J No. 46, **Ngumi v The Attorney General of The Bahamas** [2023] UKPC 12, **Ramon Lop v Attorney General of the Commonwealth of The Bahamas** SCCiv App No. 118 of 2022 and **Amihere v Attorney-General of The Bahamas** [2023] 1 BHS J. No. 90.

[33.] In **Dexter Davis v The Queen** 2015/CRI/VBI/23/1, the applicant was found to have been unlawfully detained at the Bahamas Department of Correctional Services for a period of 179 days between 23 January 2015 and 21 July 2015. The applicant was deprived of his liberty, lost his self-employment income, was unable to provide for his children, and was detained in a 6’ x 12’ prison cell with no toilet only a single bucket to excrete feces into which he shared with five other men. While detained, the applicant was infected with the scabies disease, which caused him pain. There was no finding of a breach of **Article 17** of the **Constitution**. The applicant was awarded \$89,500 in compensatory damages and \$100,000 in vindicatory damages under **Article 19(4)** of the **Constitution**.

[34.] In **Martin Orr v The Attorney General of the Commonwealth of The Bahamas** 2017/CLE/gen/00983 (11 February 2021), a 61 year-old Jamaican crewmember of a ship brought proceedings for unlawful arrest, unlawful detention, malicious prosecution and breach of his constitutional rights after he had been kept in custody for 151 days at the hands of the authorities following his arrest to face charges of *inter alia* possession of dangerous drugs with intent to supply. The claimant was arraigned at a Magistrate’s Court on 24 May 2016 and taken to the Bahamas Department of Correctional Services where he was held until he was discharged by a Magistrate on 22 September 2016. He complained that at the Bahamas Department of Correctional Services he was unable to contact anyone initially and that the conditions there were “cruel and harsh” and “generally inhabitable, unsanitary and overcrowded”. After he was discharged by the Magistrate, the claimant was then detained by immigration officers and held at the Carmichael Road Detention Center (except for a brief stint at prison during Hurricane Matthew) until he was deported to Jamaica on 18 October 2016 without his passport. On his return to Jamaica, he was diagnosed with uncontrolled hypertension, muscular strain to the lower back, fungal skin infection, anxiety/depression, post-traumatic stress disorder and major depressive disorder. The trial judge awarded the claimant damages for arbitrary arrest, false imprisonment, malicious prosecution and constitutional breaches in the sum of \$140,000, damages for loss of employment of \$11,000, exemplary and aggravated damages of \$15,000 and special damages of \$11,473.70.

[35.] In **Ousman Bojang v The Hon. Carl Bethel** [2022] 1 BHS J No. 46, the claimant, a visitor from The Gambia who intended to apply for asylum in The Bahamas, was detained for approximately 18 months at the Carmichael Road Detention Center between December 2015 and

June 2017 after attending the Department of Immigration to seek a visitor's extension. It was found that the claimant had been treated humanely while detained. He was awarded \$125,000 in compensatory damages, exemplary damages of \$40,000, damages of \$1,100 for detainee, and costs. The compensatory award was arrived by applying a daily rate of \$300 for 531 days (yielding \$159,300) and reducing it to account for tapering. The trial judge's award was upheld on appeal in **Ousman Bojang v Attorney General of The Bahamas** SCCivApp No. 139 of 2022 (13 February 2024).

[36.] In **Ngumi v The Attorney General of The Bahamas** [2023] UKPC 12, the appellant, a citizen of the Republic of Kenya, was arrested at his home on 12 January 2011 and taken to the Carmichael Road Detention Center where he was held until 4 August 2017 after pleading guilty to overstaying in a Magistrate's Court. The appellant testified *inter alia* that the dorm was never cleaned, the toilet could not flush, there were about 500 people living in the dorm which was only meant for 50 people which led to him contracting diseases, and he was beaten by officers while detained including on one occasion when he was stripped naked, handcuffed and beaten with a PVC pipe. The trial judge found the appellant was wrongfully imprisoned for 6 years 4 months and 6 days and that during that time there were multiple breaches of his constitutional rights. The trial judge awarded damages for false imprisonment, assaults and batteries in the sum of \$386,000, aggravated damages of \$50,000, exemplary damages of \$100,000 and constitutional damages by way of compensation of \$105,000 for a total award of \$641,950. The Court of Appeal increased the general damages on appeal from \$641,000 to \$750,000. The Judicial Committee of the Privy Council dismissed an appeal against the award save that it found the respondents had not on the facts been entitled to detain the appellant for a period assessed as three months pending arrangements for his deportation. The Judicial Committee assessed the "global compensation" due to the appellant for that period as \$50,000 after acknowledging that the case was not an "initial shock case" and taking into account the findings made by the trial judge about the appellant's "appalling treatment" and the conditions of his detention.

[37.] In **Ramon Lop v Attorney General of the Commonwealth of The Bahamas** SCCiv App No. 118 of 2022, the Court of Appeal awarded the appellant, a Cuban-born adult male damages of \$396,200 on account of two periods of unlawful detention at the Carmichael Road Detention Center. The first period of unlawful detention was a period of 8 months between 2009 and 2010. The second period was a later period 2 years and 9 months between November 2014 and August 2017 after the appellant had completed a sentence of imprisonment for vagrancy. The claim that the claimant had been subject to inhumane conditions at the Carmichael Road Detention Center failed at first instance as the trial judge found that "while the Detention Centre is not a five-star facility, it was more likely than not that the conditions there are fair". The sum of \$396,200 comprised compensatory damages of \$48,000 for the first period of detention, compensatory damages of \$298,200 for the second period of detention and exemplary damages of \$50,000.

[38.] In **Amihere v Attorney-General of The Bahamas** [2023] 1 BHS J. No. 90, the claimant, a citizen of the Republic of Ghana, was unlawfully detained at the Central Police Station and then the Royal Bahamas Police Force for a period of 2,756 days from 27 September 2010 to 16 May 2017 after he arrived in The Bahamas from Jamaica on 25 September 2010. While detained, he was beaten several times by officers during routine searches, was forced to sleep on the floor or box springs at the "inhumanely crowded" Detention Center and was kept in unsanitary conditions

as the toilets were always clogged, the showers were clogged and overflowed, and no cleaning products were provided. His rights under **Article 17** of the **Constitution** were found to have been breached. The claimant was awarded \$551,200 in general damages for false imprisonment, \$50,000 in general damages for assault and battery, \$700 in special damages, \$100,000 in exemplary damages, \$50,000 in aggravated damages and \$0 in constitutional damages.

[39.] Considering the cases referenced above and the circumstances of the case, I award \$70,000 in general compensatory damages for the Claimant's false imprisonment.

Compensatory damages for assault and battery

[40.] Counsel for the Claimant submitted that unlawful arrest and detention involve trespass to the person, including assault and battery. The Claimant was forcibly detained and subjected to verbal and physical mistreatment. Counsel submitted that \$30,000 should be awarded as general damages for assault and battery.

[41.] It is convenient to reproduce the Claimant's pleaded claim for assault and battery as set out in his Amended Statement of Claim:

“

Assault and Battery

21. In arresting and subsequently detaining Mr. Edwards and on board a minibus and taken into custody at the Detention Center, Mr. Edwards was verbally threatened and intimidated and was physically touched by Immigration and/or Detention Force Officers, acting as agents of the Defendants, from 14 February 2021 to 1 October 2021 when Mr. Edwards was released as aforesaid.

Particulars

21.1 Mr. Edwards was forcibly conveyed by minibus to the Detention Center on 14 February 2021.

21.2 Upon arrival at the Detention Center, Mr Edwards was forcibly imprisoned by Immigration Officers and/or Defence Force Officers from 14 February 2021 until he was released on 1 October 2021; and

21.3 At the Detention Center, Mr. Edwards witnessed other detainees being beaten or slapped by Immigration Officers and/or Defence Force Officers, thereby causing him to fear imminent violent contact to his person;

22. The Immigration Officers and/or Defence Force Officers were at all times acting in purported performance of their duties as agents of the Defendants.”

[42.] The claim for assault and battery, as I understand it, is premised on verbal threats and intimidation for which there was limited evidential support, the physical abuse of other detainees about which no particulars were given, the use of handcuffs when the Claimant was conveyed by minibus to the Detention Center and the “forcible imprisonment” of the Claimant. These matters are bound up to an extent with the claim for false imprisonment. I find the suggested award of \$30,000 to be too high a figure and instead award the sum of \$7,500 in general compensatory damages for assault and battery.

Aggravated Damages

[43.] In **Thompson v Commissioner of Police of the Metropolis** [1998] QB 498, the English Court of Appeal explained that aggravated damages are primarily awarded to compensate a claimant for injury to his pride and dignity and for humiliation, though such damages can have a penal element as far as the defendant is concerned. In **Ousman Bojang v Attorney General et al** SCCivApp No. 139 of 2022 (13 February 2024), Sir Michael Barnett P described such damages at paragraph [53] as being:

“...awarded when a plaintiff suffers increased distress because of a defendant's actions. For example, where the conduct of the defendant has caused the plaintiff to suffer indignity or outrage to his feelings. In short, it is compensatory in nature and is awarded to compensate for injury to his feelings.”

[44.] In **Takitota v Attorney General** [2009] 4 LRC 807, Lord Carswell stressed at paragraph [11] that aggravated damages are to be distinguished from exemplary damages:

“In their reference to aggravated damages in para 94 of their judgment the Court of Appeal appear to have equated them with exemplary damages, whereas they form a quite distinct head of damage based on altogether different principles. ...”

[45.] In **The Commissioner of Police v Rod Andrew Bethel** [2022] 2 BHS J. No. 88, at paragraph [45], Jones JA adverted to the need on the part of a judge assessing damages for assault, false imprisonment, and malicious prosecution to be careful to ensure that there is no double recovery between “basic” damages for the tort and “aggravated” damages:

“45 In **Rowlands v Chief Constable of Merseyside Police** [2007] 1 WLR 1065 the UK Court of Appeal took the view that as aggravated damages are compensatory and not punitive, a judge and/or jury must be careful to ensure that there is no double recovery between ‘basic’ and ‘aggravated’ damages for assault, false imprisonment, and malicious prosecution by the police. Moore-Bick L.J. said at paragraph 26:

‘It is now generally recognised that an award of aggravated damages is essentially compensatory in nature, notwithstanding the fact that it may have a punitive effect by increasing the overall amount the defendant is ordered to pay. That was explicitly acknowledged by Lord Woolf MR in **Thompson’s** case as one can see from the passages cited earlier. Whether damages awarded to compensate the claimant for distress, humiliation and injury to feelings are treated as part of the basic damages (as Thomas LJ suggested in **Richardson v Howie** [2004] EWCA Civ 1127; *The Times*, 10 September 2004) or are separately identified by the name of aggravated damages, the important factor to bear in mind is that they are primarily intended to be compensatory, not punitive. It follows that any injury for which compensation has been given as part of the award of basic damages should not be the subject of further compensation in the form of an award of aggravated damages. However, the distinction between basic and aggravated damages will continue to have a part to play as long as the right to recover for intangible consequences such as humiliation, injury to pride and dignity as well as for the hurt caused by the spiteful, malicious, insulting or arrogant conduct of the defendant attaches to some causes of action and not others.’”

[46.] Counsel for the Claimant submitted that \$50,000 should be awarded to the Claimant as aggravated damages to compensate the Claimant for injury to his dignity and emotional suffering because the Defendants’ conduct was oppressive and humiliating. Counsel for the Claimant relied

on the fact that the Claimant was denied legal counsel and communication, was held in degrading conditions, and was treated with hostility by State officers.

[47.] It is not unusual in unlawful arrest and detention cases for the award of general compensatory damages to include a component attributable to the aggravating features of the case, and for no separate identifiable award of aggravated damages to be made. It is not obligatory for a separate award of aggravated damages to be made. In **Ramon Lop v Attorney General of the Commonwealth of The Bahamas** et al SCCiv App No. 118 of 2022 (13 February 2024), Crane Scott JA articulated the relevant legal principles at paragraphs [228] and [229]:

“228. ... the law is that while a court may take account of aggravating elements of a claimant’s period of unlawful detention when assessing the overall amount of the compensatory award, whether additional compensation in the form of an identifiable sum for aggravated damages should be made in any given case, lies within the absolute discretion of the trial judge. Moreover, in each individual case, the court’s discretion whether to make a separate award for aggravated damages, will (based on common law principles) have to be informed by the evidence (if any) of particular malice exhibited towards the claimant during the period of his or her unlawful detention.

229. The common law undoubtedly recognizes that in addition to the basic compensatory award for the moral injury and injury to a claimant’s feelings arising from his or her unlawful detention, a court may also make an identifiable award in the form of aggravated damages to take account of any particular malice shown towards the victim of the tort. That said, there must necessarily be evidence before the court which is capable of supporting an additional award of aggravated damages.”

[48.] In this case, I already took into account the matters that I would consider relevant to aggravated damages in assessing the general compensatory damages for false imprisonment to be awarded to the Claimant. There is scant evidence of particular malice shown by officials towards the Claimant. In addition, as set out below, I consider an award of exemplary damages appropriate, and do make such an award. In the circumstances, I do not consider it to be necessary to make an additional, separate award of aggravated damages and decline to do so.

Exemplary Damages

[49.] In **Takitota v Attorney General** [2009] 4 LRC 807, Lord Carswell explained at paragraph [12] that exemplary damages are a form of common law damages available in a limited class of cases intended to punish the defendant for outrageous behavior and to deter them and others from repeating it:

“12. The award of exemplary damages is a common law head of damages, the object of which is to punish the defendant for outrageous behaviour and deter him and others from repeating it. One of the residual categories of behaviour in respect of which exemplary damages may properly be awarded is oppressive, arbitrary or unconstitutional action by the servants of the government, the ground relied upon by the Court of Appeal in the present case. It serves, as Lord Devlin said in *Rookes v Barnard* [1964] 1 All ER 367 at 408, to restrain such improper use of executive power. Both Lord Devlin in *Rookes v Barnard* and Lord Hailsham of St Marylebone LC in *Broome v Cassell & Co Ltd* [1972] 1 All ER 801 at 832–833 emphasised the need for moderation in assessing exemplary damages. That principle has been followed in *The Bahamas* (see *Tynes v Barr* (1994)

45 WIR 7 at 26), but in *Merson v Cartwright* [2005] UKPC 38, [2006] 3 LRC 264 the Privy Council upheld an award of \$100,000 exemplary damages, which they regarded as high but within the permissible bracket.”

[50.] In *The Commissioner of Police v Rod Andrew Bethel* [2022] 2 BHS J. No. 88, at paragraphs [46] and [47], Jones JA highlighted that there should be no award of exemplary damages in a case where such damages are capable of being awarded unless the basic and aggravated compensatory damages awarded is inadequate punishment for the defendant:

“46 Regarding the claim for exemplary damages, the authorities make it clear that there should be no award unless they satisfied the judge that it did not meet the punitive or exemplary element within the figure given as compensatory damages.

47 As for exemplary damages. In *Attorney General of Jamaica and Superintendent Clinton Laing et al v Roderick Cunningham* [2020] JMCA Civ 34 Morrison P after reviewing a line of cases in which the courts might award exemplary damages said at paragraph 36:

‘These cases all recognise and proclaim the court’s power to award exemplary damages in deserving cases, as a valuable means of punishing and deterring outrageous and contumelious disregard by servants or agents of the state of the rights of persons in Jamaica. However, following the steer given by Lord Devlin in *Rookes v Barnard*, the cases all say that exemplary damages should only be awarded in cases in which the court considers the level of compensation afforded by an award of basic and aggravated damages to be insufficient in the circumstances of the particular case to punish the defendant and deter others. And further, the cases all urge moderation in the amounts awarded for exemplary damages.’”

[51.] Counsel for the Claimant submitted that the State’s conduct was arbitrary, unlawful and high-handed and that the Court should award \$20,000 in exemplary damages to mark the Court’s condemnation and to deter future State misconduct. This sum of \$20,000 was sought in addition to “constitutional damages” of \$50,000. Counsel for the Claimant submitted that the awards in **Takitota** and **Merson** endorse this head of damage.

[52.] It is now established in Bahamian jurisprudence that in unlawful arrest and detention cases exemplary damages are capable of being awarded. The survey of cases conducted above at paragraphs [32] to [38] demonstrates a diversity of awards. In **Orr**, \$15,000 was awarded on account of aggravated and exemplary damages. In **Bojang**, \$40,000 was awarded on account of exemplary damages. In **Lop**, \$50,000 was awarded on account of exemplary damages; and in both **Ngumi** and **Amihere**, \$100,000 was awarded on account of exemplary damages.

[53.] In the circumstances, I am prepared to award exemplary damages to mark the Court’s disapproval of the arbitrary, oppressive and unconstitutional disregard of the Claimant’s rights that occurred, to signify that the law does not tolerate such behavior, and to deter future breaches. Because of the potential ramifications of an award of exemplary damages on the claim for constitutional or vindictory damages, I shall award the sum of \$40,000 on account of exemplary damages.

Constitutional Damages

[54.] In **Merson v Cartwright** [2006] 3 LRC 264, Lord Scott explained that damages which are more than purely compensatory can be awarded in claims for constitutional redress brought under the Court's constitutional jurisdiction to grant redress for infringements of constitutional rights. Lord Scott stated at paragraph [18]:

"... If the case is one for an award of damages by way of constitutional redress (and their lordships would repeat that 'constitutional relief should not be sought unless the circumstances of which complaint is made include some feature which makes it appropriate to take that course'; Siewchand Ramanoop, 66 WIR at p 343, paragraph [25]) the nature of the damages awarded may be compensatory but should always be vindicatory and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount. The purpose of a vindicatory award is not a punitive purpose. It is not to teach the executive not to misbehave. The purpose is to vindicate the right of the complainant, whether a citizen or a visitor, to carry on his or her life in the Bahamas free from unjustified executive interference, mistreatment or oppression. The sum appropriate to be awarded to achieve this purpose will depend upon the nature of the particular infringement and the circumstances relating to that infringement. It will be a sum at the discretion of the trial judge. In some cases a suitable declaration may suffice to vindicate the right; in other cases an award of damages, including substantial damages, may seem to be necessary."

[55.] In the earlier decision of **Attorney General v Ramanoop** [2006] 1 AC 328, Lord Nicholls stated at paragraphs [18] and [19]:

"[18] When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under s 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

[19] An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach and deter further breaches. All these elements have a place in this additional award. 'Redress' in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions 'punitive damages' or 'exemplary damages' are better avoided as descriptions of this type of additional award."

[56.] Counsel for the Claimant submitted that the violations of the Claimant's rights under **Articles 17 and 19 of the Constitution** warrant an award beyond compensatory damages and that \$50,000 should be awarded to the Claimant to vindicate the Claimant's rights and to emphasize

the gravity of the breach of his rights. The full suite of Articles relied upon in the Amended Statement of Claim are **Articles 17, 19 and 25 of the Constitution**.

[57.] In **Takitota**, Lord Carswell cautioned against a court making an award of both exemplary damages and constitutional or vindicatory damages, stating at paragraph [16]:

“[16] Their Lordships consider that it would not be appropriate to make an award both by way of exemplary damages and for breach of constitutional rights. When the vindicatory function of the latter head of damages has been discharged, with the element of deterrence that a substantial award carries with it, the purpose of exemplary damages has largely been achieved. To make a further award of exemplary damages, as the appellant’s counsel sought, would be to introduce duplication and contravene the prohibition contained in the proviso to art 28(1) of the Constitution. They are of the opinion that the sum of \$100,000 is justifiable on the facts of the case as an award of constitutional or vindicatory damages.”

[58.] In **Douglas Ngumi v The Hon. Carl Bethel** [2021] 1 BHS J. No. 39, the Court of Appeal, citing **Takitota**, held at paragraph [44] that it was “improper” for the trial judge in that case to have made an award for both exemplary damages as well vindicatory damages for breach of the appellant’s constitutional rights on the facts of that case.

[59.] In **Amihere v Attorney-General of The Bahamas** [2023] 1 BHS J. No. 90, it was conceded by the defendants that the claimant had been falsely imprisoned for 7 years and that there had been breaches of his constitutional rights contrary to **Articles 15, 17, 19(1), 19(2) and 19(3) of the Constitution**. However, the learned judge did not find it necessary to make a discrete award of damages for breach of the claimant’s constitutional rights. The learned judge referred to the decision of the Court of Appeal in **Antoine Justin Russell v The Attorney General** SCCivApp No. 186 of 2017 and noted that in awarding general damages she had reduced them by less than was done in **Ngumi** owing to the length of the detention and the conditions of detention and she had considered the aggravating features of the arrest and detention and made an award of both exemplary and aggravated damages.

[60.] In this case, I make no additional award of constitutional damages in light of my awards of general compensatory damages for false imprisonment in the sum of \$70,000 and assault and battery in the sum of \$7,500 and my award of exemplary damages in the sum of \$40,000. I decline to do so to avoid double recovery and because I do not consider that the damages I have already awarded inadequately vindicate the Claimant’s constitutional rights or otherwise fail to achieve the objectives of an award of constitutional damages.

Special Damages

[61.] Special damages must be specifically pleaded and proved. In **Robert Kane v The Attorney General** [2019] 1 BHS J. No. 153, Gray Evans, Sr J stated at paragraphs [16] to [19]:

“16. It is settled law that special damages must be pleaded, particularised and proven, unless, of course, they are agreed. See, for example, *Ilkiw v Samuels* [1963] 1 WLR 991; *Lubin v Major* [No. 6 of 1990]; *Merson v Cartwright* supra; *Tynes v Barr* supra; and *Timothy Bethel and Sherry Strachan v Karen McDonald*, SCCiv 2 of 2012, in which Adderley, J.A. delivering the judgment of the Court, with which the other justices agreed, reiterated: ‘Special damages must be both pleaded and proved.’

...

18. In the case of *Michelle Russell v Ethylyn Simms and Darren Smith*, 2008/CLE/gen/00440, Sir Michael Barnett, CJ, as he then was, said at paragraph 43: "43. It is not in general sufficient for him merely to plead special damage and thereafter recite on oath the same facts, or give evidence in an affidavit without any supporting credible evidence aliunde, and sit back expecting the tribunal of fact to accept his evidence as true in its entirety, merely because the aforesaid evidence is not controverted..."

19. At paragraph 47 of that case, the learned Chief Justice also said: "Unquestionably, it is for the plaintiff to prove her damage. It is not enough to write down particulars, and, so to speak, throw them at the court and say 'I am entitled to this.'"

[62.] In **Robert Kane**, one of the items of special damages in issue was a claim for legal fees totaling \$31,600 said to have been paid to McKinney, Bancroft & Hughes, Jeanne T. Tate PA and Shurland & Company (Bahamas). Gray Evans, Sr J rejected the claim because it was not properly pleaded and particularized and no evidence was led by the claimant or anyone else on his behalf, nor were any invoices or receipts included among the documentary evidence, to show that the claimant was billed and/or paid sums totaling \$31,600 in legal fees to McKinney, Bancroft & Hughes, Jeanne T. Tate PA or Shurland & Co.

[63.] In this matter, Counsel for the Claimant invited the Court to award the Claimant special damages in the sum of \$69,935 comprising \$62,735 in legal fees owed to Callenders & Co, \$3,500 for loss of the Claimant's motor vehicle, \$3,000 for loss of the Claimant's tools and equipment and \$700 for loss of the Claimant's domestic computer. However, the Claimant's Amended Statement of Claim only sought to recover the legal fees and not the other items of special damages. No award is made in respect of the unpleaded items of special damages.

[64.] The Claimant's Amended Statement of Claim pleads with respect to special damages:

"39. The special damages claimed by the Claimant are set out in the Schedule of Past Expenses and Losses served with this Statement of Claim. The Defendants caused the Claimant to incur the following special damages set out as aforesaid:

Date	Description	Expense (\$)
29.09.21 to 06.12.22	Legal Fees and Expenses incurred by Mr. Edwards to retain Callenders & Co. in respect of: Illegal detention; Obtaining copy of Marriage Certificate from Registrar General's Department; Commencing application for Leave to issue Habeas Corpus; Trial of the Leave Application; Issuance of Writ of Habeas Corpus; Judgment; Disbursements; Brief of KC, etc.	\$62,735.00

"

[65.] Although this did not feature in the Claimant's submissions, the recovery of legal costs as damages is subject to restrictions. The position in English law, which I take to reflect Bahamian law on this point, is stated in **Halsbury's Laws of England** at paragraph [403] of Volume 29 (Damages) under the heading "Recovery of Liabilities and Expenses Incurred in other Proceedings":

"Where the parties are the same, the starting point is that no party to proceedings in England and Wales in which the court is enabled to make an order for costs is entitled to recover any costs of

those proceedings from any other party except under an order of the court: nor may what are properly designated costs be recovered as damages. Thus a person who has been successful in earlier proceedings and been awarded costs cannot generally in another action, whether for tort or breach of contract, recover those costs from the other party; nor a fortiori can they bring an action against the other party to recover their costs where they were unsuccessful or to the extent that their application for costs was in whole or in part refused by the earlier tribunal, since such proceedings would tend to defeat the rules of court relating to the court's powers and discretion to award costs.

This rule, however, is subject to three specific qualifications in cases where the instigation of the previous proceedings constituted a tort or breach of contract against the claimant.

First, if the previous tribunal had no power to make an order for costs, there is, it seems, no objection to the now claimant recovering their entire costs incurred before that tribunal.

Second, where the previous proceedings were in breach of an arbitration agreement, it may be open to the claimant to recover the entire costs incurred on an indemnity basis as damages for breach of the agreement to arbitrate.

Third, in the case of malicious prosecution or malicious civil process an action will lie to recover costs over and above those (if any) awarded by the original court. In an action for false imprisonment, a claimant is entitled to recover the costs of securing their discharge, but any such costs must have been reasonably incurred and they have no absolute right to them.

The rule of policy precluding a separate action for costs between the same parties does not generally apply to actions claiming costs incurred in foreign proceedings.”

[66.] The Claimant attempted to recover the costs of his habeas corpus application in **Fitzroy Edwards v Vonette Flowers** 2021/CRI/CON/007 but Turner Snr J (as he then was) in a judgment dated 19 October 2022 ordered that each party bear their own costs. His Lordship did so because he concluded in other proceedings that the type of habeas corpus application made was criminal in nature, the jurisdiction to award costs in criminal matters was required to be exercised according to the prevailing practice when the **Supreme Court Act** was enacted (per **The Government of the United States of America v Kozeny** [2010] 1 BHS J No, 71), and there was no prevailing practice to award costs in criminal matters (see **Fitzroy Edwards v Vonette Flowers** [2022] 2 BHS J. No. 238). This is therefore not a case of the Claimant failing to seek costs and the first qualification listed in the **Halsbury's** extract above would seem to apply.

[67.] Although I am prepared to accept that the Claimant's legal fees are capable of being recovered from the Defendants as damages, the only evidence about the Claimant's legal fees is a bald statement by the Claimant in his witness statement that he now owes Callenders & Co \$62,735 for representation and legal proceedings related to his unlawful detention. No invoices or other documentary evidence were produced to support the amount of fees claimed. Nor was a bill of costs submitted to itemize specifically for what work the fees were charged. The only description of the work the fees are said to relate to is the description contained in the Claimant's Amended Statement of Claim, which was repeated in substance in his Schedule of Past Expenses and Losses included in the Claimant's Bundle of Documents. Furthermore, no argument was directed towards establishing that the fees claimed, which include the cost of briefing King' Counsel, are reasonable.

[68.] In the circumstances, I am not satisfied it would be appropriate to make an award of special damages in the sum of \$62,735 for the Claimant's legal fees. Instead, I award the nominal sum of \$15,000.

Interest

[69.] **Section 3(1) of the Civil Procedure (Award of Interest) Act** addresses pre-judgment interest. It provides:

“In any proceedings tried in any court, whether or not a court of record, for the recovery of any debt or damages, the court may if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section —

- (a) shall authorise the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right, whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.”

[70.] Counsel for the Claimant invited the Court to award interest pursuant to **Section 3(1) of the Civil Procedure (Award of Interest) Act** at the rate of 5% per annum up to the date of judgment from the date when the cause of action arose, citing **Ngumi**, or alternatively from the date of the writ.

[71.] In **Ngumi v Attorney General of the Bahamas** [2023] UKPC 12, one of the issues in the appeal was whether the Court of Appeal had been correct in awarding pre-judgment interest from the date of the writ rather than the date that the cause of action arose. Dame Ingrid Simler giving the advice of the Board stated at paragraphs [89] to [91]:

“89. Mr Smith submitted that in principle, damages for false imprisonment accrue from day to day from the first day of that imprisonment. If interest is only awarded from the date of the writ, the appellant will receive no compensation for having been kept out of his money for a period of over six years. The usual measure of damages in tort is to put the plaintiff in the position that he would have been in (so far as money can) if the tortious act had not been committed. Without such interest, the appellant is not properly compensated. Furthermore, without interest being payable, the respondents thereby benefit from their own wrong, as the amount they are ultimately required to pay to the appellant in relation to the earlier period of his detention is decreased by the reason of their wrongful acts in continuing his false imprisonment.

90. The Board rejects these arguments and considers that the Court of Appeal made no error of principle in the award of interest made. The Court of Appeal well understood that there was power to award interest “... on the whole or any part of the debt or damages for the whole or any part of the period between the date when the case of action arose and the date of the judgment” (see section 3(1) of the Civil Procedure (Award of Interest) Act 1992). It was therefore open to the Court of Appeal to award interest from the date the cause of action first arose or from the date of the writ. In deciding to award interest from the date of the writ, the Court of Appeal accepted what was expressly proposed by the appellant as an alternative to awarding interest from the first day of his unlawful detention. It is difficult to see how the exercise of discretion can be challenged in these circumstances.

91. Moreover, this was a rational approach in the circumstances. Although the cause of action accrued on the first day of unlawful detention, only one day of damage and not 2,316 days of damage accrued at that point. To award interest on the full sum from that date would have over-compensated the appellant. To do so at the generous rate of 6.25% (which is the enhanced rate

applicable to judgment debts, rather than a commercial rate) for the full period would certainly have resulted in a windfall. In the circumstances, the Court of Appeal was fully justified in adopting the date of the writ as the start date for the interest award, and no error of principle can be identified.”

[72.] In **Ousman Bojang v Attorney General of The Bahamas** SCCivApp No. 139 of 2022 (13 February 2024) the Court of Appeal upheld a decision by the first instance judges to award pre-judgment interest at the rate of 6.25% from the date of the writ rather than from the date the cause of action arose. In **Ramon Lop v Attorney General of the Commonwealth of The Bahamas et al** SCCiv App No. 118 of 2022 (13 March 2024), the Court of Appeal awarded pre-judgment interest at the rate of 2.4% from the date of the writ to the date of judgment.

[73.] I have discretion under the **Civil Procedure (Award of Interest) Act** to award the Claimant pre-judgment interest for “the whole or any part of the period between the date when the cause of action arose and the date of the judgment”. I find the reasons given by Dame Ingrid Simler in **Nugmi** for awarding pre-judgment interest from a date later than when the cause of action arose to be compelling and applicable.

[74.] It is noted that: (i) the writ was generally endorsed and filed before the Claimant was released from custody and before the Claimant was granted leave to issue a writ of habeas corpus in **Fitzroy Edwards v Vonette Flowers** 2021/CRI/CON/007 (as detailed in the judgment reported as [2022] 2 BHS J. No. 238); (ii) the Statement of Claim was filed and served well after the time prescribed for doing so under **Order 18, Rule 1** of the **Rules of the Supreme Court**; and (iii) in **Nugmi**, the interest rate of 6.25% per annum was described by Dame Ingrid Simler as “generous”.

[75.] In the circumstances, I award interest at the rate of 3% on the total award of damages from the date that the Statement of Claim was served, 23 June 2022, to the date of this judgment. Thereafter, statutory interest runs on the damages awarded at the statutory rate of 6.25% per annum until payment.

Costs

[76.] Counsel for the Claimant submitted that, by the Court’s Order granting leave to enter judgment in default of defence, the Claimant was awarded the costs of the proceedings including the costs of the assessment of damages. However, “for the avoidance of doubt, if and to the extent that the Order does not already determine the question of costs”, the Claimant also sought costs by assessment in accordance with **Parts 72.8 and 72.9** of the **CPR**.

[77.] It was intended that the Claimant’s costs of the proceedings including the costs of the assessment of damages be summarily assessed in concluding the assessment, as has recently been done in a number of other proceedings. Regrettably, however, the Claimant did not provide a statement or bill of costs to facilitate this being done. The Claimant is therefore to have his costs of the proceedings including the costs of the assessment of damages assessed by a detailed assessment if those costs are not agreed.

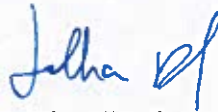
Conclusion

[78.] For the reasons set out above, the Court awards the Claimant damages in the sum of \$132,500 comprised of general damages for false imprisonment in the sum of \$70,000, general damages for assault and battery in the sum of \$7,500, exemplary damages in the sum of \$40,000, and special damages in the sum of \$15,000.

[79.] It is ordered that judgment be entered for the Claimant in the sum of \$132,500 together with interest to accrue on the damages awarded at the rate of 3% per annum from the date the Statement of Claim was served, 23 June 2022, to today's date and thereafter at the statutory rate of 6.25% per annum until the damages are paid in full.

[80.] The Defendants shall pay the Claimant's costs of the proceedings including the costs of the assessment of damages, to be assessed by detailed assessment if not agreed.

Dated the 30th day of October, 2025



Jonathan Deal
Assistant Registrar